

Microsoft violated Minn. Stat. § 325D.52, which makes unlawful, among other things, using monopoly power to fix prices or to affect competition.

Plaintiff Mednick is a Minnesota citizen who purchased Microsoft's Windows 98 software. As a result of Microsoft's monopolistic practices alleged in his Complaint, Plaintiff Mednick paid a price for his Windows 98 software that was much greater than the price that would have been charged in a competitive market. Plaintiff Mednick's case is brought as a class action on behalf of himself and all other similarly situated citizens of Minnesota. Since purchasers of this program register electronically with Microsoft, the members of this class are readily identifiable.

Defendant Microsoft's motion seeks an order from the Minnesota Supreme Court transferring Plaintiff Mednick's action from the Minnesota District Court in Ramsey County to the Minnesota District Court in Hennepin County and consolidating Plaintiff Mednick's action with Gordon v. Microsoft, a case against Microsoft pending in Hennepin County. The Gordon case involves many more claims against Microsoft and, hence, the case is more complex than Plaintiff Mednick's action and involves a far larger putative class. Defendant Microsoft's motion also seeks an order from this Court directing that Plaintiff Mednick's case be consolidated with all future actions that might become pending in any Minnesota District Court involving claims or factual allegations that are "similar" to those in either Plaintiff Mednick's case or in the Gordon case.

I. Defendant Microsoft's Motion Must Be Denied Because The Supreme Court Lacks Jurisdiction Over Plaintiff Mednick's Case And No Law Authorizes The Supreme Court To Grant The Relief Sought By Defendant's Motion.

The Supreme Court of the State of Minnesota is "vested only with appellate jurisdiction, except in such remedial cases as may be prescribed by law." Holtberg v. Bommersbach, 235 Minn.

553, 51 N.W.2d 586, 587 (1952); Minn. Constitution, Article 6., Section 2. No judgment or appealable order has been entered by the District Court in Plaintiff Mednick's case. No appeal has brought Plaintiff Mednick's case before the Supreme Court. Since Plaintiff Mednick's case is not within the appellate jurisdiction of the Supreme Court, Defendant Microsoft's motion is not properly before the Supreme Court unless the motion is authorized by a statute.

Microsoft bases its motion on Minn. Stat. § 480.16, which reads as follows:

480.16. Distribution of work of courts; duty of judges to comply with chief justice's direction

The chief justice shall consider all recommendations of the court administrator for the assignment of judges, and has discretionary authority to direct any judge whose calendar, in the judgment of the chief justice, will permit, to hold court in any county or district where need therefor exists, to the end that the courts of this state shall function with maximum efficiency, and that the work of other courts shall be equitably distributed. The supreme court may provide by rule for the enforcement of this section and section 480.17.

This statute cannot be construed as authorizing the motion brought by Defendant Microsoft in the Minnesota Supreme Court. The statute does not confer any jurisdiction whatsoever upon the Supreme Court and does not direct the Supreme Court to do anything. Rather, the statute merely gives the Chief Justice of the Minnesota Supreme Court discretionary authority to assign a district court judge sitting in one district to also serve in another district. Nothing in the statute authorizes a party to an action in a district court to bring a motion in the Supreme Court for an order affecting the disposition of a case pending in a district court. Therefore, Minn. Stat. § 480.16 does not authorize Microsoft's motion.

Even if Minn. Stat. § 480.16 could somehow be construed as authorizing Microsoft to bring a motion in the Supreme Court, the statute does not provide for the relief sought by Microsoft, i.e. an order transferring Mednick's case to another judicial district and consolidating it with other cases against Microsoft. The statute says nothing about either transfer or consolidation. Nothing in the statute authorizes the Supreme Court to issue orders in a case pending before a district court. Instead, the plain language of the statute provides the Supreme Court with no authority whatsoever but only gives its Chief Justice discretionary authority to direct a judge in one judicial district to also serve in another district.

Microsoft calls its motion a request to transfer but it is actually a motion to change the venue of Mednick's case. In addition to the reasons given above, Minn. Stat. § 480.16 cannot be read as providing a means to transfer cases between judicial districts in light of the specific provisions of Chapter 542 of the Minnesota Statutes respecting venue. Minn. Stat. § 542.01 provides that every civil action will be tried in the county where it is begun unless the venue is changed as provided in Chapter 542. In light of the specific provisions in Chapter 542 regarding venue, Minn. Stat. § 480.16 cannot be construed as providing a vehicle to change the venue of a case.

Microsoft's reliance on Rule 42.01 of the Rules of Civil Procedure is also misplaced. Rule 1 of the Rules of Civil Procedure provides that said rules govern procedure in the district courts of the State of Minnesota. Hence, Rule 42.01 cannot be construed as authorizing the Supreme Court to consolidate cases pending in the district courts.

Defendant Microsoft relies on the order of this Court In Re: Minnesota Vitamin Antitrust Litigation, 2000 WL 210213 (Feb. 17, 2000). This order does not provide authority for the relief sought by Defendant Microsoft for a number of reasons. First, the order in the Minnesota Vitamin

Antitrust Litigation was issued with the consent of all of the parties that had appeared. Consent of the parties is lacking in this situation because Plaintiff Mednick objects to the order requested by Microsoft. Second, the order in the Minnesota Vitamin Antitrust Litigation does not direct the transfer of any case from one district to another but only appoints a single judge to hear all of the cases. Third, the order does address whether or not the various cases should be consolidated. Therefore, the order relied on by Defendant Microsoft in making this motion is not a precedent establishing that it is entitled to the relief sought by its motion.

For the above reasons, the Supreme Court does not have jurisdiction over Microsoft's motion and no statute authorizes the relief requested by the motion. Therefore, Microsoft's motion should be dismissed.

II. Plaintiff Mednick's Case Should Not Be Reassigned To Judge Peterson.

Microsoft moves that Mednick's case be reassigned from Judge Lindman sitting in the Minnesota District Court in Ramsey County to Judge Peterson sitting in the Minnesota District Court in Hennepin County. Mednick opposes this motion.

As discussed in the preceding section of this memorandum, Minn. Stat. § 480.16 gives the Chief Justice of the Minnesota Supreme Court discretionary authority to assign a judge sitting in one judicial district to also serve in another one. If Microsoft's motion is construed as a request to the Chief Justice that she reassign Mednick's case to another judge, the Chief Justice should deny the request.

Minn. Stat. § 480.16 does not authorize the Chief Justice to micro-manage the administration of the district courts by assigning particular judges to specific cases. Instead, the statute

contemplates that the Chief Justice will macro-manage the work load of the courts by assigning a judge sitting in one judicial district to also serve in another district which needs help due to its workload. Hence, the order sought by Microsoft, i.e. an order reassigning Mednick's case from Judge Dale B. Lindman of the Ramsey County District Court to Judge Bruce A. Peterson of the Hennepin County District Court, is not one authorized by Minn. Stat. § 480.16.

Even if an order assigning Mednick's case to Judge Peterson were permissible under Minn. Stat. § 480.16, reassignment of Mednick's case would not be appropriate. Microsoft wants Mednick's case assigned to Judge Peterson because the Gordon case is pending before him. The assumption behind Microsoft's request is that Mednick's case and the Gordon case¹ need to move in lock-step. This assumption is wrong.

Plaintiff Mednick's case involves a single Microsoft product, Windows 98. This product has been on the market only about two years. All of the members of the class which Plaintiff Mednick seeks to represent registered their licenses with Microsoft electronically and, hence, are readily identifiable.

The Gordon and the other cases against Microsoft referenced in Microsoft's motion involve all of the operating systems sold by Microsoft over many years. For example, the plaintiff in the Gordon case seeks to represent Minnesota purchasers of any operating system for a personal computer licensed by Microsoft on or after May 18, 1994. The operating systems involved could include Windows 3.11, Windows for Workgroups, Windows NT Workstation, Windows 95 and

¹Microsoft also wants all future "similar" cases against it to be assigned to Judge Peterson, including any cases remanded to state court from MDL 1332 and the local transferee federal districts.

Windows 98. As a result, the Gordon case and the other cases against Microsoft involve many products and many years of discovery and litigation. These cases are not similar to Mednick's action, except that they are brought against the same defendant.

The difference in the task facing Plaintiff Mednick and the tasks faced by the plaintiffs in the other Minnesota cases against Microsoft is monumental. Evidence establishing that Microsoft unlawfully used monopoly power in selling Windows 98 was admitted in the consolidated trial of United States v. Microsoft Corporation and New York v. Microsoft Corporation. In his findings and conclusions in that case, Judge Thomas Penfield Jackson found that Microsoft violated the antitrust laws with respect to Windows 98 and only with respect to the Windows 98 operating system does Judge Jackson reach the conclusion that Microsoft engaged in unlawful exclusionary monopolization. All the evidence introduced against Microsoft in the consolidated trial is admissible in Mednick's case under Rule 804(b)(1) of the Minnesota Rules of Evidence. There were no specific findings respecting any of the earlier Microsoft products mentioned above. In other words, the liability case against Microsoft for illegal monopolization respecting Windows 98, i.e. Plaintiff Mednick's case, has been made, but the various causes of action remain to be proved for the other Microsoft products involved in the Gordon case and the other Minnesota cases.

The Mednick case should not be tied to the other cases against Microsoft in Minnesota.² Because Microsoft's liability for illegal monopolization respecting Windows 98 was established in

²The scope and status of the cases commenced against Microsoft in Minnesota are set forth on the chart attached hereto. The complaints in these cases are attached to Microsoft's moving papers. The chart illustrates the diverse nature of these cases with respect to scope of putative classes, standing of class representatives, the time periods for purchase and the variety of Microsoft products involved. This summary shows that Mednick's case is distinct from the others.

the consolidated trial, Mednick's case will be ready to proceed to trial long before the other cases while it appears that substantial discovery and other work will be required to prove that Microsoft illegally used monopoly power respecting the other Windows products involved in the other cases sought to be consolidated.

Microsoft contends that the proceedings in the Mednick case need to be coordinated with those in the other Minnesota actions against it by a single judge. However, such a need is not demonstrated by Microsoft's moving papers. No reason is offered why Microsoft would be prejudiced if Mednick's case proceeds to trial before the other cases. A decision on the claims alleged in Mednick's case will be final and those claims cannot be retried in any other case. Microsoft does not face a risk of more than one trial on these claims.

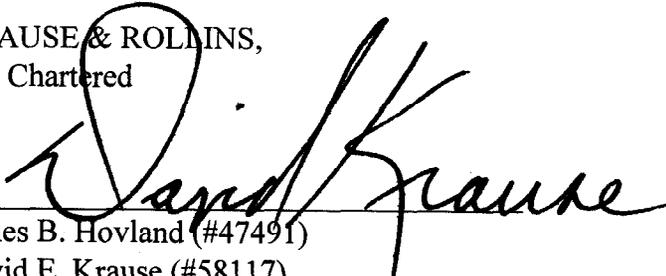
CONCLUSION

For the reasons advanced herein, Mednick asks that Microsoft's motion be dismissed by the Supreme Court and that the Chief Justice not reassign his case to the judge of another judicial district.

Dated:

August 18, 2000

KRAUSE & ROLLINS,
Chartered


James B. Hovland (#47491)
David E. Krause (#58117)
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ATTORNEYS FOR PLAINTIFF

CASES SUBJECT TO CONSOLIDATION REQUEST

Plaintiff	Class Representative Standing	Putative Class	Status of Case
Philip A. Mednick	Purchaser of Windows 98 upgrade and Dell Computer with Windows 98 operating system built in. (§10 - Complaint)	"All end user licensees of Windows 98 residing in the State of Minnesota as to whom Microsoft has an electronic mail address that is computer-accessible by Microsoft." (§16 - Complaint)	State of Minnesota, District Court, Ramsey County.
Rubbright Group	Plaintiff is a Minnesota corporation which purchased a computer installed with Windows 98. (§7 - Complaint)	"All individuals and entities who purchased Windows from entities or persons other than Microsoft in the State of Minnesota." (§18 - Complaint) Windows products are identified as MS-DOS Windows 3.11, Windows for Workgroups, Windows NT Workstation, Windows 95, Windows 98 (§12 - Complaint)	Removed to federal court and transferred to MDL 1332 in Baltimore, Maryland.
Steven Nielsen	Plaintiff is an indirect purchaser of Microsoft Windows and Internet Explorer. (§8 - Complaint)	"All persons or entities who indirectly purchased, leased or licensed Microsoft Windows or Microsoft Internet Explorer, in Minnesota, for their own use and not for resale." (§11 - Complaint)	Removed to federal court and transferred to MDL 1332 in Baltimore, Maryland.
David Jaffe	Plaintiff David Jaffe paid for and licensed in his name an Intel-compatible PC operating system licensed by Microsoft and installed in a Compaq Presario personal computer. In addition, Plaintiff recently paid for and licensed in his name the Windows '98 upgrade, on Intel-Compatible PC operating system licensed by Microsoft, which was purchased at Best Buy for approximately \$90.00. (§4 - Complaint)	"all persons or entities in the State of Minnesota who purchased for purposes other than re-sale or distribution on or after May 18, 1994 . . . Intel-compatible PC operating systems licensed by Microsoft." (§8 - Complaint)	Removed to federal court and transferred to MDL 1332 in Baltimore, Maryland.
Daniel Gordon	Plaintiff Daniel Gordon paid for and licensed in his name an Intel-compatible PC operating system licensed by Microsoft and installed in a Gateway personal computer. (§4 - Complaint)	"all persons or entities in the State of Minnesota who purchased for purposes other than re-sale or distribution on or after May 18, 1994 . . . Intel-compatible personal computer operating systems licensed by Microsoft." (§8 - Complaint)	State of Minnesota, District Court, Hennepin County.
Idy Klein	Plaintiff Idy Klein purchased a Pentium PC computer in 1997 which included the Windows 95 operating system. (§7 - Complaint)	"This class action is brought on behalf of all residents and citizens of Minnesota who, up to the date of the filing of this Complaint and for four years prior, bought any version of Windows from Microsoft, or purchased a personal computer with Windows pre-installed." (§1 - Complaint)	Removed to federal court and transferred to MDL 1332 in Baltimore, Maryland.

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August 18, 2000

FILED

* ALSO ADMITTED IN NORTH DAKOTA
** CERTIFIED CIVIL TRIAL SPECIALIST

HAND DELIVERED

Frederick K. Grittner
Supreme Court Administrator
Supreme Court
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25 Constitution Avenue
St. Paul, MN 55155-6102

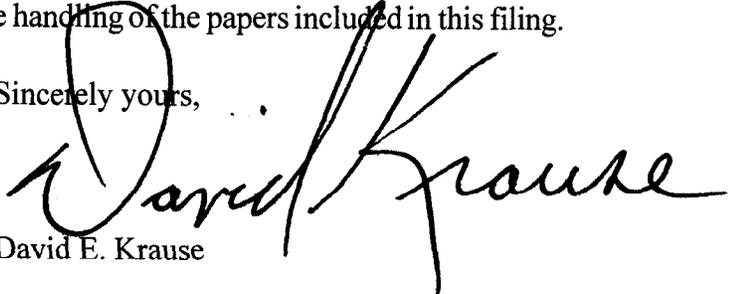
**RE: Memorandum Opposing Motion of Microsoft Corporation to
Transfer and Consolidate the following cases:**
Daniel Gordon v. Microsoft Corporation
Hennepin County Civil No. 00-5994
Philip A. Mednick vs. Microsoft Corporation
Ramsey County Civil No. C0-00-1276

Dear Mr. Grittner:

Enclosed for filing with the Minnesota Supreme Court please find an original and four copies of the Memorandum of Philip A. Mednick Opposing Motion of Microsoft Corporation to Transfer and Consolidate his Case.

I understand that your office has not yet assigned a number to this matter. Please contact Court Commissioner, Richard S. Slowes, regarding the handling of the papers included in this filing.

Sincerely yours,


David E. Krause

DEK:amn
Enclosures

OFFICE OF
APPELLATE COURTS

STATE OF MINNESOTA
COUNTY OF HENNEPIN

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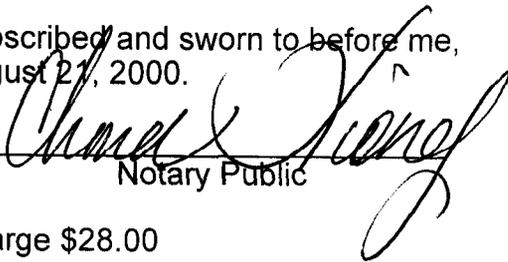
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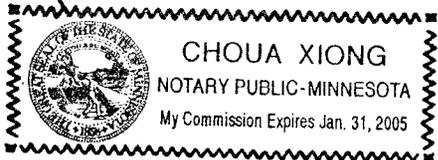
Greg DeGrace, being duly sworn, on oath says: that on the 18th day of August, 2000, at 3:24 p.m. (s)he served the attached Memorandum of Philip A. Mednick Opposing Microsoft Corporation's Motion to Transfer and Consolidate His Case upon David R. Crosby, Esq. therein named, personally at 150 S. 5th Street, #2200, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with David R. Crosby, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
August 21, 2000.


Notary Public

Charge \$28.00





Re: 4445

STATE OF MINNESOTA
COUNTY OF HENNEPIN

OFFICE OF
APPELLATE COURTS

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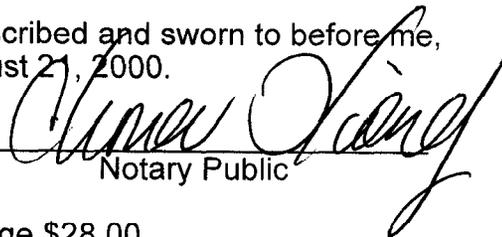
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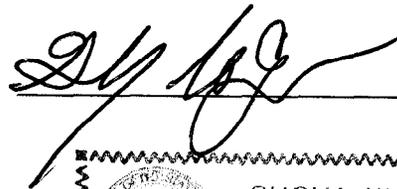
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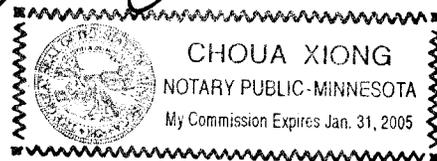
Geoff Egerman, being duly sworn, on oath says: that on the 18th day of August, 2000, at 4:00 p.m. (s)he served the attached Memorandum of Philip A. Mednick Opposing Microsoft Corporation's Motion to Transfer and Consolidate His Case upon Richard M. Hagstrom, Esq. therein named, personally at 33 S. 6th Street, Minneapolis, County of Hennepin, State of Minnesota, by handing to and leaving with Sandra Forsythe, receptionist, an expressly authorized agent for service for said Richard M. Hagstrom, Esq., a true and correct copy thereof.

Subscribed and sworn to before me,
August 21, 2000.



Notary Public





Charge \$28.00

Re: 4445